

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TIMOTHY LYKKE, D.P.M.,

Plaintiff,

v.

GENERAL AMERICAN LIFE
INSURANCE COMPANY and UNUM
LIFE INSURANCE COMPANY OF
AMERICA,

Defendants.

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C.A. No. 4:17-cv-02909

NOTICE OF REMOVAL

Defendants General American Life Insurance Company (“General American”) and Unum Life Insurance Company of America (“Unum Life”) (together, “Defendants”), for the purpose only of removing this cause to the United States District Court for the Southern District of Texas, Houston Division, state:

I. STATE COURT ACTION

This case involves a dispute over disability benefits under an insurance policy (the “Policy”) issued by General American to Plaintiff Timothy Lykke, D.P.M. (“Dr. Lykke” or “Plaintiff”). On July 24, 2017, Dr. Lykke filed suit against Defendants in the 234th Judicial District Court of Harris County, Texas, where it was numbered 2017-49017 on the docket of that court. Dr. Lykke has asserted claims for breach of contract, violations of the Texas Insurance Code (the “Code”), violations of the Texas Deceptive Trade Practices – Consumer Protection Act (the “DTPA”), breach of the duty of good faith and

fair dealing, fraud, and declaratory judgment. He seeks to recover actual damages, exemplary damages, treble damages, pre-judgment interest, post judgment interest, attorney's fees, and costs of court.

II. SUBJECT MATTER JURISDICTION EXISTS

A. Diversity Jurisdiction.

1. **The Parties Are Completely Diverse.** Dr. Lykke was a citizen of Texas at the time this action was filed and remains a citizen of Texas as of the date of this removal. Unum Life is a Maine insurance company with its principal place of business in Portland, Maine. Unum Life was a citizen of Maine at the time this action was filed and remains a citizen of Maine as of the date of this removal. General American is a Missouri insurance company with its principal place of business in St. Louis, Missouri. General American was a citizen of Missouri at the time this action was filed and remains a citizen of Missouri as of the date of this removal. Thus, complete diversity of citizenship exists between Dr. Lykke and Defendants.

2. **The Requisite Amount in Controversy is Satisfied.** The amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs. In his lawsuit, Dr. Lykke does not specify the range of damages that he seeks, which is a violation of Tex. R. Civ. P. 47(c). Nevertheless, it is clear that the requisite amount in controversy is satisfied.

Specifically, Dr. Lykke alleges in Plaintiff's Original Petition, Request for Disclosure and Jury Demand (the "Original Petition") that the monthly benefits under the Policy are \$4,875.00 and that, after a period of initial payments, Defendants denied

further benefits as of April 6, 2015. *See* Plaintiff’s Original Petition at ¶¶ 18 and 20. Dr. Lykke further alleges that he “has been and remains disabled per the terms of the Policy.” *Id.* at ¶ 39. Thus, according to Dr. Lykke’s allegations, he is owed benefits under the Policy for at least the past two years. As such, the alleged damages for Dr. Lykke’s breach of contract claim alone (*i.e.*, the alleged past due benefits) exceed the sum or value of \$75,000.00, excluding interest and costs. Furthermore, Dr. Lykke seeks attorney’s fees, mental anguish damages, treble damages, an 18% penalty under the Code, and exemplary damages. When considering these extra-contractual amounts, it is clear from Dr. Lykke’s pleading that the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs. *See, e.g., Pow Agrosience L.L.C. v. Bates*, 332 F.3d 323, 326 (5th Cir. 2003) (claim for \$18,242.50, trebled under DTPA, plus attorneys’ fees, meeting the \$75,000.00 jurisdictional threshold); *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1255 (5th Cir. 1998) (claim for 18% penalty under the Code is included in the amount in controversy); *Graham v. Henegar*, 640 F.2d 732, 735-36 fn. 9 (5th Cir. 1981) (attorneys’ fees must be included in calculating amount in controversy); *see also Cross v. Bell Helmets, USA*, 927 F. Supp. 209, 212-213 (E.D. Tex. 1996). Because the parties are completely diverse and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, the Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332.

III. REMOVAL IS PROPER

Because the parties are completely diverse and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, the Court has jurisdiction over this action

pursuant to 28 U.S.C. § 1332. Accordingly, this action may be removed pursuant to 28 U.S.C. § 1441. The citation and a copy of Plaintiff's Original Petition were served on General American on August 31, 2017 and on Unum Life on September 14, 2017, at the earliest. As such, the removal is timely under 28 U.S.C. § 1446. Venue is proper in this Court under 28 U.S.C. § 1391, as this action was pending in a state court within this district and division. Finally, and as discussed above, removal is timely under 28 U.S.C. § 1446(b).

IV. STATE COURT DOCUMENTS ATTACHED

Attached as Exhibit A is an "Index of State Court Documents," which includes true and correct copies of the state court docket sheet and all documents filed in the state court action. These documents constitute all of the process, pleadings, or orders filed in state court or served on Defendants.

V. RELIEF REQUESTED

Defendants respectfully request that the United States District Court for the Southern District of Texas, Houston Division, accept this notice of removal, assume jurisdiction of this cause, and issue all orders and processes necessary to bring before it all parties necessary for the trial hereof.

Respectfully submitted,

By: /s/ Dennis M. Lynch
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent by certified mail, return receipt requested, to Mr. Marc Whitehead, Mr. J. Anthony Vessel, Ms. Britney Anne Heath McDonald, Marc Whitehead & Associates, LLP, 5300 Memorial Drive, Suite 725, Houston, Texas 77007, on this the 28th day of September, 2017.

/s/ Dennis M. Lynch
Dennis M. Lynch